

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Provision of Improved Telecommunications)	
Relay Services and Speech-to-Speech)	CC Docket No. 98-67
Services for Individuals with Hearing and)	
Speech Disabilities)	
)	
Petition for Clarification of WorldCom, Inc.)	

**COMMENTS OF
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Claude Stout, Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803

Telephone: (800) 735-2258 (MD Relay)
(301) 589-3006 (TTY)
Facsimile: (301) 589-3797

Andrew D. Lipman
Paul O. Gagnier
Jeanne W. Stockman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for Telecommunications for the
Deaf, Inc.

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SUMMARY

Telecommunications for the Deaf, Inc. (“TDI”) hereby submits these comments to respond to the Commission’s *Notice* regarding interstate-only cost allocation for IP Relay. The Telecommunications Advocacy Network of the National Association of the Deaf and the Association of Late Deafened Adults support these comments. TDI commends the Commission for ruling that IP Relay calls are eligible for reimbursement because it will enable users with hearing loss to access the latest available technology for relay calls. TDI agrees with the Commission’s decision to establish an interstate TRS funding mechanism for IP Relay, observing that Section 225’s plain language as well as its overriding policy objectives support this conclusion. Because of the novel jurisdictional issue presented by IP Relay calls, TDI believes the Commission is justified in making IP Relay an exception to Section 225(d)(3)(B)’s general requirement to separate costs jurisdictionally. TDI believes interstate-only funding is the best way to promote IP Relay’s provision and use, consistent with Section 225, in order to maximize the benefits of this technological innovation to the deaf community and the hard of hearing population. One of these benefits is IP Relay’s multi-vendoring potential, which stands to bring the long-overdue benefits of competition to TRS users.

A joint federal-state cost recovery scheme is undesirable not only because it would be grossly inefficient and burdensome, but also because it would likely impede IP Relay development. It would be unreasonable for the Commission to compromise the higher equal access goals of Section 225 through an unduly strict interpretation of its jurisdictional cost separation provisions, particularly when the cost provisions have built-in flexibility to avoid this absurd result.

To ensure that the Commission's regulations remain responsive to the needs of the deaf community and hard of hearing population, and consistent with the latest technology, TDI asks the Commission to periodically review its interstate cost allocation scheme every three (3) years. The development and use of IP Relay, however, should be regularly monitored by NECA.

The *Notice* proposed a variety of means to distinguish between intra- and interstate IP Relay calls, including creation of a user profile and use of a fixed allocator. TDI is concerned that the burden posed by these alternatives may have the unintended effect of discouraging IP Relay use. In the event the Commission concludes that it is appropriate to require intra- and interstate cost recovery for IP Relay providers, TDI respectfully requests that the Commission explore means to reduce the substantial administrative burden intrastate cost recovery would cause to IP Relay providers so they are not discouraged from offering this service. An alternative would be for NECA to reimburse IP Relay providers entirely from the interstate fund for all calls, with the understanding that NECA would recoup from intrastate funds the amounts applicable for intrastate calls.

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Telecommunications for the Deaf, Inc. (“TDI”) hereby submits these Comments in response to the Commission’s *Second Further Notice of Proposed Rulemaking* (“*Notice*”) in the above-referenced proceeding.¹

TDI is a national advocacy organization actively engaged in representing the interests of the twenty-eight million Americans who are deaf, hard of hearing, late-deafened, and deaf-blind. TDI’s mission is to promote equal access to broadband, media and telecommunications for these constituency groups through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy. Only through equal access will these twenty-eight million Americans be able to enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. Furthermore, only by ensuring

¹ *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, (rel. April 22, 2002) (“*IP Relay Order*” and “*Notice*”).

equal access for all Americans will society benefit from the myriad of skills and talents of persons with disabilities.

The Telecommunications Advocacy Network of the National Association of the Deaf (“TAN-NAD”) and the Association of Late Deafened Adults (“ALDA”) support these comments. The National Association of the Deaf is the nation’s oldest and largest constituency organization safeguarding the accessibility and civil rights of twenty-eight million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the National Association of the Deaf is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The National Association of the Deaf works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

ALDA is an all volunteer organization that represents individuals who have become deaf after having heard and used verbal speech, mostly after adolescence. ALDA is dedicated to obtaining and maintaining access to information, communications, employment and services that benefit people who become deaf.

TDI commends the Commission for ruling that IP Relay calls are eligible for reimbursement because it will enable users with hearing loss to access the latest available technology for relay calls. The most important objective in this proceeding, as indicated by its

caption, is to encourage the “provision of *improved* [TRS].”² As the Commission recognized, “[a]uthorizing cost recovery for IP Relay, and thereby encouraging the growth of IP Relay, is an important step forward in providing improved TRS service.”³

I. SECTION 225 ENABLES THE FCC TO CONCLUDE THAT ALL COSTS FOR IP RELAY SHALL BE REIMBURSABLE FROM THE INTERSTATE TRS FUND.

The Notice seeks comment on whether the Commission must at this time restructure the existing funding mechanism for IP Relay established in the Commission’s *IP Relay Order*. In the *IP Relay Order*, the Commission determined that IP Relay should be supported on an interim basis by interstate TRS fund, as opposed to state relay funds.⁴ Among other reasons, the Commission based its interim decision to support IP Relay using the interstate TRS fund on the inability of IP Relay carriers to determine whether calls are intrastate or interstate in nature.⁵ Going forward, however, the Commission seeks to reconcile its *IP Relay Order* with Section 225’s provisions regarding jurisdictional separation of costs, and asks whether recovery of costs from the Interstate TRS Fund should be a temporary or a permanent measure.⁶

TDI respectfully submits that Section 225’s plain language as well as its overriding policy objectives afford the Commission the discretion to retain the interstate TRS funding mechanism established in the *IP Relay Order* on a long-term basis. TDI is concerned that an unduly strict reading of Section 225 would impermissibly impede the provision and use of IP

² See CC Docket No. 98-67 (emphasis added).

³ Notice, ¶ 40.

⁴ *IP Relay Order*, ¶ 20.

⁵ Because IP Relay calls come via the Internet, and Internet addresses have no geographic correlates, there is currently no automatic method by which an IP Relay provider can determine whether a given call is either intrastate or interstate. *IP Relay Order*, ¶ 5.

⁶ *IP Relay Order*, ¶ 2.

Relay services, unnecessarily depriving those with disabilities from having the equal access to technology to which they are entitled. TDI believes interstate funding is the best way to promote IP Relay deployment and to ensure that the deaf community and the hard of hearing population have equal access to the benefits of this technological innovation.

A. Section 225's Jurisdictional Cost Separation Requirements Afford the Commission Discretion to Use Interstate Funds for IP Relay.

Section 225 of the Communications Act of 1934, as amended, governs provision of TRS. Section 225(d)(3)(B) provides that the TRS regulations “shall *generally* provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.”⁷ As the Commission previously concluded with respect to video relay interpreting (“VRI”), Section 225’s own terms do not require the Commission to impose strict jurisdictional cost separation in all cases. In the VRI proceeding, the Commission stated it “believe[s] the word ‘generally’ [in Section 225(d)(3)(B)] gives [it] some discretion to fund intrastate service from the interstate jurisdiction.”⁸ Because of the novel jurisdictional issue presented by IP Relay calls, TDI believes the Commission is justified in making IP Relay an exception to Section 225(d)(3)(B)’s general requirement to separate costs jurisdictionally. Because technological advancements such as IP Relay were unforeseen when Section 225(d)(3)(B) was enacted, TDI believes this exercise of discretion is particularly appropriate. Further, in addition to IP Relay’s unique technical characteristics supporting the Commission’s use of discretion, TDI believes interstate-only funding is the best way to promote

⁷ 47 U.S.C. § 225(d)(3)(B) (emphasis added).

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 15 FCC Rcd 5140, 5154 (2000) (“VRI Order”).

IP Relay's provision and use in order to maximize the benefits of this technological innovation to the deaf community and the hard of hearing population, and their respective contacts.

B. Funding IP Relay from Interstate TRS Is the Best Way to Promote Its Provision and Use, Consistent with Section 225.

Funding IP Relay from interstate TRS is the most effective and efficient means of promoting its provision and use, consistent with Section 225. “[T]he overall purpose of Section 225 is to ‘ensure that interstate and intrastate [TRS] are available, to the extent possible and in the most efficient manner, to [individuals with hearing and speech disabilities] in the United States.’”⁹ Assuming arguendo that there were a reasonable and reliable means to distinguish between interstate and intrastate IP Relay calls (which, as discussed herein, there currently is not), a joint federal-state cost recovery scheme would be grossly inefficient and therefore likely to impede IP Relay development.¹⁰ This inefficiency stems from both Section 225(f)’s state certification requirements as well as the ubiquitous nature of IP Relay service.

Under Section 225(f), before an IP Relay provider could be eligible for recovery of intrastate costs *in any state*, it would have to undergo a time-consuming and burdensome competitive bidding process. In order for an IP Relay provider to be eligible for intrastate cost recovery in all states nationwide, it would have to undergo fifty (50) separate and distinct RFP processes. Because IP Relay can be accessed from any Internet access connection, however, every IP Relay provider would become subject to dealing with all fifty (50) state TRS programs

⁹ *IP Relay Order*, ¶ 10 (citing 47 U.S.C. § 225(b)(1)).

¹⁰ *VRI Order*, 15 FCC Rcd at 5153. In the case of VRI, the Commission exercised discretion with respect to its cost recovery rules to improve the efficiency of the service: “It is not efficient to have relay interpreters associated with one state or an interstate relay center with down time while there are people throughout the country who want to make calls through VRI but cannot because of the jurisdictional cost recovery rules.” *Id.*

immediately upon entering the market.¹¹ The resultant administrative burden and potential delay is staggering, and would most certainly discourage carriers from entering the market to provide this innovative service. TDI understands that there are now at least three providers of IP Relay TRS.¹² Cost recovery is a key consideration for potential new market entrants.¹³ By designating interstate-only cost recovery, the Commission obviates the need for carriers to endure an extraordinarily cumbersome and varied intrastate cost recovery authorization and approval process, while also providing assurance that both intra- and interstate costs will be recouped. This action has the beneficial effect of improving the efficiency of IP Relay deployment, consistent with Section 225, thereby facilitating wide deployment of this innovative service.¹⁴

Moreover, Congress and the Commission undoubtedly value functionally equivalent access to innovative services as a more important public objective than jurisdictional separation of costs.¹⁵ Section 225(d)(2) directs the Commission to “ensure that regulations prescribed to implement this section encourage . . . the use of existing technology and do not discourage or impair the development of improved technology in the delivery of relay services.”¹⁶ As discussed above, strict adherence to jurisdictional cost separation would trigger the unwieldy

¹¹ By contrast, a circuit-switched relay provider would only deal with the state TRS funds in the states where it had made arrangements to carry originating TRS calls.

¹² For traditional TRS, in every state except California there is only one TRS provider certified to receive intrastate cost recovery. *IP Relay Order*, ¶ 18.

¹³ *IP Relay Order*, ¶ 26 (“In addition to WorldCom, AT&T has tested an Internet-based relay service and has stated *that it will launch such a service when we permit the recovery of costs.*”) (emphasis added).

¹⁴ *IP Relay Order*, ¶ 16. This was a factor in the Commission’s decision to authorize cost recovery for VRI from interstate funds and simplify its provision by carriers. *See VRI Order*, 15 FCC Rcd at 5154.

¹⁵ “I hope we can learn from the developments in IP Relay and continue to adapt our regulations to technological change to ensure our policies do not relegate some consumers to a technological backwater.” *IP Relay Order*, Separate Statement of Commissioner Kathleen Abernathy.

¹⁶ 47 U.S.C. § 225(d)(2).

intrastate reimbursement requirements of Section 225(f). From the state perspective, joint federal-state cost recovery may also trigger burdensome procedural requirements, further discouraging IP Relay's proliferation. States are not currently obliged to provide IP Relay service and it would likely be time-consuming and burdensome for them to do so. Even if this burden is overcome, because often states are only required to have one relay service provider, once states expend the effort to authorize one provider it is doubtful whether they would authorize any additional providers, particularly if the process is at all burdensome.¹⁷ These circumstances may have the unintended consequence of impeding the provision and use of IP Relay, contrary to Section 225(d)(2), to the detriment of potential users of the service. Significantly, with respect to VRI, the Commission found that authorizing interstate funding was necessary to be "consistent with [Section 225(d)(2)'s] mandate" and to promote its deployment.¹⁸ The Commission should utilize this same approach to promote IP Relay and retain its interstate funding on a long-term basis. It would be unreasonable for the Commission to compromise the higher equal access goals of Section 225 through an unduly strict interpretation of its jurisdictional cost separation provisions, particularly when the cost provisions have built-in flexibility to avoid this absurd result.

Further, it is a basic tenet of statutory construction that a statute should not be construed to frustrate its purpose. "When interpreting a statute, the court will look not only merely to a particular clause in which general words may be used, but will take in connection with it the

¹⁷ If burdensome state procedural requirements cause a disincentive to authorize multiple IP Relay providers, the benefits of multi-vendoring may never be realized. These benefits are discussed at Section II.C, *infra*.

¹⁸ *VRI Order*, 15 FCC Rcd at 5154. In the *VRI Order*, the Commission encouraged VRI deployment in a variety of ways: "[I]n order to encourage [VRI] technology, as is our statutory mandate . . . we intend to establish special funding arrangements for VRI to speed its development. During the development of this new relay service, we will permit recovery of costs associated with both intrastate and interstate calls from the interstate TRS Fund. . . . We also believe our approach will reduce costs and spur industry and consumer investment in the equipment and technologies necessary to use VRI, without burdening state relay programs." *Id.* at 5153.

whole statute . . . and the objects and policy of the law, as indicated by its various provisions, and give to it such construction as will carry into execution the will of the legislature.”¹⁹ Commissioner Copps observed that “[a]s new technologies develop, [the Commission has] an obligation to do everything [it] can to realize the vision of Congress that those with disabilities have access to *functionally equivalent* services so that *all* citizens can participate fully in our society.”²⁰ Allowing interstate cost recovery for IP Relay services would satisfy this obligation by facilitating its provision and use. By contrast, becoming unnecessarily mired in jurisdictional cost recovery issues would only strangle the more fundamental and over-arching purpose of Section 225. Thus, to realize Congress’ vision and fulfill the intent of Section 225, the Commission must encourage access to IP Relay through interstate funding in order to bring the benefits of this innovative service to the disabilities community.

C. Interstate Funding of IP Relay Stands to Improve TRS Overall.

In the *IP Relay Order*, the Commission acknowledged that IP Relay is a valuable addition to TRS because of its multi-vendoring potential.²¹ Multi-vendoring is significant because it would bring the long-overdue benefits of competition to TRS users.²² Multi-vendoring has long been an important objective for TRS advocates because competition among vendors is predicted to spur price competition, innovation, and new and diverse service offerings. While

¹⁹ *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974).

²⁰ *IP Relay Order*, Statement of Commissioner Michael J. Copps.

²¹ See *IP Relay Order*, ¶¶ 18, 26. Presently, traditional TRS is not competitive because in every state except California there is only one TRS provider.

²² With respect to TRS, the Commission has observed that “competitive forces are generally the preferred way to improve service quality and bring new services to customers” and that “giving consumers a choice among different TRS providers might well improve the quality of TRS service in different states.” *VRI Order*, 15 FCC Rcd at 5157.

many other telecommunications sectors have enjoyed tremendous benefits from competition, first in terminal equipment, then in long-distance, and ultimately in numerous other services, TRS users have been saddled with outdated equipment and virtually no choice of providers. IP Relay service stands to improve the competitive landscape for TRS vastly by providing an immediate competitive alternative for any TRS user owning an IP-capable device.

The only way the benefits of multi-vendoring will be realized, however, is if the Commission's regulation is conducive to market entry -- i.e., undue administrative burdens are minimized and cost recovery is secured. Importantly, interstate funding for IP Relay facilitates market entry by satisfying these conditions, and as a result, promises finally to bring TRS users the benefits of a competitive telecommunications marketplace.

D. TDI Believes the Commission Should Periodically Revisit the Interstate Funding Mechanism for IP Relay and Task NECA with Regularly Monitoring the Development and Use of the Service.

Although TDI believes interstate cost recovery is appropriate at this time, TDI believes it would be prudent for the Commission to revisit this allocation methodology periodically.²³ TDI believes a three-year review cycle provides the appropriate balance of regulatory certainty, to encourage providers to enter the market, and flexibility, to adapt to change as needed. This procedure would facilitate the implementation and growth of IP Relay, while providing the Commission a ready vehicle to alter the cost allocation scheme should technological advances or other circumstances make it reasonable to do so. Future innovations may enable ready determination of the origin of IP Relay calls, or distinctions between intra- and interstate calling may become blurred over time. Periodic Commission review of the IP Relay cost allocation

²³ Similarly, the Commission declined to make interstate funding of VRI permanent. *See VRI Order*, 15 FCC Rcd at 5154.

scheme, however, will help ensure that the Commission's regulations remain responsive to the needs of the disabilities community and promote equal access to innovative telecommunications services.

With respect to other IP Relay issues aside from interstate cost recovery, TDI recommends that the Commission charge the Interstate TRS Fund Administrator, NECA, with regularly monitoring development and use of IP Relay.²⁴ While TDI advocates a three year review for interstate cost recovery, more frequent monitoring of the service is prudent to facilitate prompt examination and resolution of any issues that may arise. TDI recommends that NECA issue reports and recommendations to the FCC for its review, and from these reports and recommendations, the Commission would then determine the appropriate course of action. In addition, NECA should be tasked with assessing the costs of IP Relay service and developing an appropriate allocation factor for carriers contributing to the interstate fund.

II. IF, NOTWITHSTANDING SECTION 225, THE COMMISSION IS COMPELLED TO DISTINGUISH INTERSTATE AND INTRASTATE CALLS, IT MUST ENSURE THAT ITS ACTIONS NEITHER THWART DEPLOYMENT OF IP RELAY NOR BURDEN ITS USERS.

Although TDI believes Section 225 affords the Commission sufficient discretion to retain interstate funding for IP Relay, in the event the Commission is compelled to distinguish between intra- and interstate IP Relay calls at this time, TDI urges the Commission to ensure that such action neither thwarts deployment of IP Relay nor burdens users. The Notice proposed a variety of means to distinguish between intra- and interstate IP Relay calls, including creation of a user profile and use of a fixed allocator. TDI is concerned that the burdens posed by these alternatives may have the unintended effect of discouraging IP Relay use.

²⁴ TDI has become aware of an issue it would strongly recommend NECA to examine – the use of IP Relay by international callers to call one another in their own country (i.e., a caller in Australia using the service to call

A. Mandatory User Profiles Are Undesirable May Discourage Use of IP Relay.

TDI believes that the mandatory use of user profiles invades the privacy interests of IP Relay users. Many consumers are reluctant to provide personal information over the Internet, even if its confidentiality can be assured. Others may view creating profiles as inconvenient and burdensome, especially because there is no commensurate profile requirement for use of traditional TRS. IP Relay users are entitled to have the option of using the service on an anonymous basis, just as other consumers are able to use telephones and other telecommunications devices on an anonymous basis. Without profiles, a first-time user can visit a TRS provider's IP Relay website and make their first call within minutes, or even seconds, of accessing the site. Mandatory profiles will undoubtedly cause delays in call initiation that consumers will likely find annoying and undesirable. All of these circumstances may discourage consumers from adopting IP Relay and therefore make mandatory profiles undesirable.

Although TDI disfavors the use of mandatory profiles, it acknowledges that some users may find maintaining a voluntary profile to be useful. Voluntary profiles could be used to create an address book or a list of frequently called persons. IP Relay providers may then develop specialized services or features to enhance users' calling experience. Should the Commission decide to use profiles, they should be voluntary and narrowly tailored to exact only jurisdictional information from the originating caller – i.e., originating area code or originating state. TDI notes, however, any intra- and interstate call allocation based on voluntary profiles would be at least somewhat inaccurate because some users would decline to participate.

someone else in Australia). If this use persists, TDI is concerned that the system could suffer significant financial setbacks.

B. Assigning a Fixed Allocator to IP Relay Calls Is Also an Imperfect Alternative.

Although assigning a fixed allocator to IP Relay calls may be somewhat less intrusive to IP Relay users than requiring mandatory user profiles, TDI questions the Commission's ability to develop an accurate fixed allocator for a service in such a nascent state. TDI has insufficient evidence to determine whether intra- and interstate calling patterns for traditional TRS necessarily translate to IP Relay calls. In order to form a reasonable basis for a fixed allocator, TDI believes the Commission would have to collect empirical evidence from IP Relay users regarding the nature of their calls. Unfortunately, because IP Relay service is so new and there is not yet a vast pool of users, polling current users about their calling patterns risks overburdening them and discouraging them from using the service. Further, such information is susceptible to the same inaccuracies associated with user profiles. Although TDI believes it would be difficult to assign an accurate fixed allocator for IP Relay calls, it has no objection to the Commission seeking input from NECA's Interstate TRS Fund Advisory Council to further address this issue.

C. The Commission Should Explore Means to Reduce the Administrative Burden of Intrastate Cost Recovery.

In the event the Commission concludes that it is appropriate to require intra- and interstate cost recovery for IP Relay providers, TDI respectfully requests that the Commission explore means to reduce the substantial administrative burden intrastate cost recovery would cause to IP Relay providers. As previously discussed, absent interstate-only funding, IP Relay providers would be subject to fifty (50) varied state certification programs in order to be assured of receiving intrastate reimbursement. TDI fears that, absent interstate-only funding, very few IP Relay providers would navigate this state regulatory morass and, as a result, the deaf community and hard of hearing population would suffer reduced choice and competition for functionally

equivalent TRS service. TDI posits whether NECA would be able to interface directly with the states to reduce this administrative burden on carriers. One alternative would be for NECA to reimburse IP Relay providers entirely from the interstate fund for all calls, with the understanding that NECA would recoup from intrastate funds the amounts applicable for intrastate calls. This would greatly simplify the intrastate reimbursement process, while also arguably complying with Section 225(d)(3)(B)'s jurisdictional separation requirements. Even if this specific alternative is not feasible, TDI asks the Commission to explore whether other arrangements may accomplish the same objective.

III. CONCLUSION

TDI commends the Commission for authorizing cost recovery for IP Relay from the interstate TRS fund. TDI respectfully submits that such action is squarely within the bounds of Section 225. Not only does the Commission have the discretion under Section 225(d)(3)(B) to deviate from strict jurisdictional separation of costs, but it has the obligation under Section 225(d)(2) to encourage the development of improved technology such as IP Relay in the delivery of relay services. IP Relay, with its multi-vendoring potential, also stands to bring the benefits of competition to TRS users. To ensure that its regulations remain responsive to the needs of the deaf community and hard of hearing population, and consistent with the latest technology, TDI asks the Commission to periodically review its interstate cost allocation scheme every three (3) years. The development and use of IP Relay should be regularly monitored by NECA. Finally, TDI cautions that there are substantial drawbacks associated with the Commission's proposed

means to distinguish between intra- and interstate IP Relay calls, and suggests that the Commission explore measures to simplify intrastate cost recovery.

Respectfully submitted,

Claude Stout, Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803
Telephone: (800) 735-2258 (MD Relay)
(301) 589-3006 (TTY)
Facsimile: (301) 589-3797

s/

Andrew D. Lipman
Paul O. Gagnier
Jeanne W. Stockman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for Telecommunications for the
Deaf, Inc.

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